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NO. 3- 02-MC-032-M

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

CLERK, U.S. DISTRICT COURT

Deputy

MAY - 9 2002

Gerald K. Smith, as Plan Trustee for and on behalf of the Estates of Boston Chicken, Inc., et al.,

Plaintiff,

vs.

Arthur Andersen LLP, a limited liability partnership, et al.,

Defendants.

**STIPULATION TO WITHDRAW GODWIN GRUBER'S  
MOTION TO QUASH AND OBJECTIONS TO THE  
TRUSTEE'S SUBPOENA DUCES TECUM**

THE PARTIES TO THIS STIPULATION, PLAINTIFF, GERALD K. SMITH, PLAN TRUSTEE OF BOSTON CHICKEN, INC. ("TRUSTEE"), GODWIN GRUBER, P.C. ("GODWIN GRUBER"), AND DEFENDANT SCOTT A. BECK ("BECK") HEREBY STIPULATE AND AGREE AS FOLLOWS:

1. Beck will produce to the Trustee the following documents in the *Charles D. Howell, Trustee v. Blockbuster Entertainment Corporation, Scott Beck et al.*, Dallas County District Court, State of Texas, Case No. 10193-M (the *Howell* case) in the care, custody or control of Beck's Dallas, Texas counsel, Gardere Wynne & Sewell, L.L.P. ("Gardere Wynne");

- a. Depositions, interrogatories and requests for admissions;
- b. Trial exhibits;

c. Trial transcripts; and

d. The settlement agreement signed by all parties.

2. Gardere Wynne also will provide a list of other documents in its care, custody or control to determine if additional documents are needed by the Trustee by May 20, 2002.

3. Beck will produce to the Trustee the *Howell* documents identified in paragraph 1 (a) to (d) above at the offices of Beck's local counsel in Phoenix, Arizona no later than May 17, 2002.

4. Based upon Judge Paul G. Rosenblatt's May 2, 2002 Order, Beck agrees that Godwin Gruber can produce its copy of the *Howell* settlement agreement.

5. The Trustee agrees to treat the *Howell* settlement agreement produced by Beck and Godwin Gruber as subject to the Order Governing Confidentiality Of Documents Produced By Third Parties entered by the Honorable Paul G. Rosenblatt on February 5, 2002. If other documents called for by this Stipulation were subject to a confidentiality order in the *Howell* case, then those confidential documents will be subject to Judge Rosenblatt's February 5, 2002 Order Governing Confidentiality Of Documents Produced By Third Parties.

6. Godwin Gruber will review the following boxes it maintains in storage in the *Howell* case for the purpose of removing any confidential, privileged or work product materials: 12, 14-20, 28, 34, 42, 48, 49, 54, 57, 64, 84, 87, 95, 100, 104, 107, 112, 180, 185-190, 193-195 and 198-207. The documents to be produced to the Trustee from these boxes is formal discovery including, depositions, interrogatories and requests for admissions, trial exhibits, trial transcripts and the *Howell* settlement agreement.

1           7. The Trustee will pay a reasonable cost of retrieving the foregoing boxes from  
2 storage in Dallas, Texas and delivery to Godwin Gruber.

3           8. The Trustee will pay to Godwin Gruber for the "privileged" review of these  
4 boxes a fair and reasonable fee not to exceed \$4,000.

5           9. Godwin Gruber will complete its "privileged" review in order that its  
6 nonprivileged documents can be reviewed by the Trustee, for purposes of inspection and  
7 copying, at Godwin Gruber beginning no later than May 24, 2002. The Trustee will pay the  
8 cost of reproducing the documents it identifies from Godwin Gruber's nonprivileged  
9 document production.

10          10. The Trustee agrees that if any confidential, privileged or work product  
11 materials are discovered during its review of Godwin Gruber's documents, the Trustee will  
12 so notify Godwin Gruber, not make any copies thereof and will consider production of such  
13 materials to be inadvertent and not an express or implied waiver of any privilege or  
14 confidential treatment to which the materials are otherwise entitled.

15          11. If Godwin Gruber subsequently determines after its document production to  
16 the Trustee that any documents so produced contained confidential or privileged information,  
17 then Godwin Gruber will have the right to the return of such documents and their production  
18 will not be deemed to be a waiver of any privilege or confidential treatment. On the  
19 Trustees' motion, the Court can decide whether the document is confidential or privileged

20          12. By this Stipulation, Godwin Gruber agrees to withdraw its Motion To Quash  
21 and Objections to the Trustee's *Subpoena Duces Tecum* set for hearing on May 10, 2002 and

1 the Trustee and Godwin Gruber agree that the Court may enter an Order approving the  
2 Stipulation.

Respectfully submitted,

**BEUS GILBERT PLLC**

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